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Chief Justice Shepard Reflects on Judiciary's Role

Chief Justice Randall T. Shepard delivered his annual State of the Judiciary address on January 15, 2004, to a joint session of the House of Representatives and Senate of the Indiana General Assembly. The text of his address is reprinted here.

"A Difficult Year that Prompted Reflection"

We usually carry with us for the rest of our lives the memory of where we were when we first learned of certain shocking events – the death of President Kennedy, or September 11th, or the news about Governor Frank O'Bannon. Beyond the immediate trauma, such moments also cause us to reassess our own lives and careers. Actually, many people ask themselves questions like this from time to time anyway – certainly people in public life do. Is what I am doing worthwhile? Am I doing everything I could do for my fellow human beings? In the course of thinking about such questions, we usually learn more about our relationships with each other, and we see more clearly the path that lies ahead.

Since September, I've spent more time thinking about what it is that Indiana's judges do for people, and whether we're doing well enough at helping to improve the lives people live in Indiana.

And certainly, judges are involved in the lives of citizens on thousands of occasions each day. As we begin 2004, we're about to pass a remarkable milestone. This year for the very first time the number of new cases filed in Indiana's courts will exceed two million. That's 8,000 new cases a day, or five hundred in the time it takes me to give this speech. In short, judges see more people up close and personal than any

other institution in Indiana government except maybe the public schools. My report today focuses on what we do for them, and how we are trying to do better.

We See Families

A huge number of people come to court because there is trouble in the family: a disintegrating marriage, domestic abuse, custody and child support disputes, children in need of services, and delinquency. You'll remember that the legislature asked for an interim study on the idea of family courts, and I proposed that we do some experiments trying new techniques to deploy the resources of courts and social agencies in a more coherent way. Under the leadership of Court of Appeals Judge Margret Robb, last month we extended this "Family Courts Initiative" to seven new counties so that some seventeen counties as varied as Lake, Lawrence, and Tippecanoe are now applying these techniques.

Of course, while the courts are the place where family lawsuits are filed, old-fashioned litigation is not usually the best way to resolve a family dispute. We've worked hard at promoting mediation in Indiana, but the problem with family cases is that even mediation costs some money and most people don't have it. Last year, after a successful

demonstrations project in Allen County, led by Judges Tom Ryan and Tom Felts, we asked you for the tools to make family mediation available statewide, and you passed that legislation by unanimous votes in both houses. I'm glad to report that just six months since the effective date of that legislation we are prepared to offer family mediation in counties with a total population of over 1.5 million, and we will stage workshops this spring to help other counties do the same.

To be effective at helping families in trouble, judges have to be alert to changes in the way people live and bring up their children. There are a lot more "blended families" these days, and a child support system that doesn't recognize that won't work very well. Our Domestic Relations Committee led by Judge Dan Donohue of Clark County, devised a way that fairly takes multiple family obligations into account. Last year they worked on responding to another change in the American family – the growing use of real shared parenting after divorce. That change, of course, is good news.

It's the policy of this state that both parents should participate in the lives of their children, and the child support system needs to support that policy. Our committee has developed changes

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to Indiana's child support guidelines that I think do that and those changes became effective this month. For all the talk about divorce and distress, there is hope for the American family. The number of children living with two parents has been declining for forty years, but last year it went up. Part of what judges try to do is act in ways that help make such statistics possible.

We Meet People Who Cannot Speak English

We took time last year to assess how we treat Indiana's new immigrants, the largest group of which is Hispanic. Not even the Census Bureau is really sure just how many people of Latino descent there are in Indiana, but it is certainly a third of a million. Like other people, they find their way to Indiana's hundred or so courthouses, and once there, they sometimes find themselves feeling just like we'd feel if we were in a new country and could not speak the language. Think of how we'd feel if our home or custody of our children was at stake or if we were at risk of going to jail, and we could barely understand what was being said to us. And let's say there wasn't anybody there to translate, or that the person who was trying to translate wasn't very good at it.

The Supreme Court's Commission on Race and Gender Fairness, chaired by former Justice Myra Selby and Court of Appeals Judge Zeke Friedlander, proposed a system to help people who face this language barrier, and we asked you to give us a down payment on putting that system in place, and you did. And as it happens, the first group of people who hope to be certified interpreters is here in Indianapolis as a part of the testing process, and we'll soon make the first grants to Indiana counties to put those interpreters at work where people need them. These new immigrants are going to turn out to be good Hoosiers, and we need to help them get there.

We Find People Without Lawyers

I've also been thinking about how complicated the government and its court system can look to people. Try as we do to make it otherwise, it all gets more complicated every year. You pass more laws, we issue more decisions, the executive branch writes more regulations. And the average citizen finds it harder to navigate the system without legal help. A good many people among the working poor are just a little too well off for standard legal aid and not really able to afford market rate legal help.

Judges and lawyers worry about people like that, and there are many ways we've tried to give them access to justice. Indiana lawyers have always lent a hand pro bono to some people who simply showed up at the office door. In the 1960s, the federal government began financing legal services offices. Indiana was one of the first states to commit state money to support these local offices. More recently, most states have used interest generated by lawyer trust accounts to expand the number of lawyers in legal services offices.

On this point, Indiana took a different approach. Had we used that trust account money simply to employ full-time lawyers, we could have hired perhaps ten lawyers, spread across a state of six million. Instead, we used it to build a statewide network of volunteer lawyers led at the local level by judges. By last year, with the help of our partners in the State Bar Association and its Foundation we had doubled the number of lawyers volunteering to help needy people, so that there are nearly 3,000 lawyers covering every county in the state. People all over the country who are concerned about equal justice talk of this system in admiring terms as the "Indiana plan". I say we have good cause to be proud of what has happened here on access to justice.

And speaking of access, you'll remember that this legislature made Indiana the first state to start its own program to expand the number of minority lawyers. We're about to receive applications for the eighth class of Indiana CLEO. This is paying off in visible ways. One day last year I looked out in the courtroom during oral argument at our law clerks and saw something I hadn't noticed before – that six of the eleven law clerks in the Indiana Supreme Court were black or Hispanic and that four of those six were people who had come up through CLEO. I think it's something that has never happened in any other American appellate court, and it says something very good about Indiana as a place of equal opportunity.

We Encounter People Who Are Out of Work

A good many of the people judges see in court each day are actually in legal difficulty because they are unemployed or underemployed. And while the task of building Indiana's job base is in the hands of the legislative and executive branches, we spent time last year reflecting on what we can do within our own sphere of responsibility to support that effort.

One thing Indiana needs to be is a place where employers that are thinking about locating here can bring with them the lawyers they usually use to put those kinds of economic development deals together. We adopted new rules, effective two weeks ago, that make it easier for companies locating in Indiana to bring with them in-house legal talent. For that matter, it will help Indiana's existing employers, many of which have installations in multiple states, to move legal talent around as their commercial needs dictate.

We are also working to accomplish the same thing on an international basis. Indiana was the first state to adopt the new uniform rule on what are called "foreign legal consultants," lawyers licensed in other countries who can now obtain an Indiana license to advise Indiana companies on the law of China or Spain, to make it easier to export Indiana goods. And last year, this decision by our Court caught the attention of the United States Trade Representative, a member of the President's

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cabinet, who negotiates commercial treaties with other nations. The Trade Representative asked whether we would consent to have Indiana's rule tendered to the nations with which America is presently negotiating. Of course we agreed, because we believe it's in Indiana's interest if foreign countries reciprocate and thus make it easier for Indiana lawyers to work abroad on deals for exporting Hoosier products.

We Choose Who to Send to Jail

Finally, we've been re-thinking our role in public safety. Among the most sobering things judges do is deciding what the punishment should be in criminal cases, some 264,000 times last year some Indiana judges were called upon to decide a penalty — ranging all the way from a dollar and costs to death by lethal injection. Deciding where each defendant fits along that continuum is one of the most important things we do for our fellow citizens. Two cases from last year still stick in my mind.

One was a child molesting case involving a defendant who worked for the school. He began dating a woman who came to him for advice about her son, and he eventually became sexually involved with her eleven-year-old son. Child molesting is a class A felony, for which the standard sentence under the Indiana Code is thirty years. After he was found guilty, the mother and the son said to the court, "We want him to pay for what he has done," but "if he gets the minimum, that is fine with us." The minimum was twenty years. For reasons I won't take the time to detail, the sentence imposed was 385 years. One of the questions on appeal was whether this sentence was excessive. We decided it was and revised it to 90 years, which even with good time, given the age of the defendant, might turn out to be life in prison. More than 90 years, we thought, did not add anything to punishment for him or deterrence of others.

The other case that sticks in my mind was a case in which the maximum sentence was exactly the right thing. It is a chilling story. Two white guys are hanging around when one of them says, "Do you know what those black spider tattoos are all about?" Yes, came the reply, you get that tattoo when you kill a black person. "I'd really like to get one of those," says the first fellow. They go off to get a rifle and start out in their car looking for a target. They come upon a young African-American man walking across the parking lot at Sears, and the guy who wants the tattoo puts ten shots in him for no more reason than that. Judge Stephen Platt imposed the maximum. There were a number of reasons, but one was a reason we had never encountered before on appeal — and that the racial animus that motivated the crime qualified under the Indiana Code as an aggravating circumstance enhancing the sentence. Judge Sharpnack and his colleagues on the Court of Appeals agreed that this was a maximum sentence case. Our court said, "That's right." Every Indiana judge who heard that case said what I suspect other officeholders and Hoosiers more generally would say, that a perpetrator who commits such a crime earns

the maximum sentence. We are a state with a tough approach to crime, but we are also a state, as U.S. Supreme Court Justice Potter Stewart said of Indiana some forty years ago, that has pursued "conspicuously enlightened policy." One of the toughest aspects of the policy is to figure out, as best human beings can do, which defendants can safely be put on suspended sentences, which ones need regular supervision, which ones need the tight supervision of work release or a drug court, and which need a prison bed at the Department of Correction, our costliest alternative.

The easy penalty, of course, is incarceration, but your creation of the Sentencing Policy Study Committee last year, chaired by Senator David Long, through a bill sponsored by Representative William Crawford, is a renewed indication that Indiana is willing to put these policies under the microscope once again and devise the smartest sentencing arrangements we can to protect the public. I think that judges can contribute to that dialogue, and I thank you for including us on this new committee, and I pledge that we will put forth substantial ideas for reforms to Indiana's system of sentencing.

The Need for a New Compensation Plan

Reforms like this depend in large measure on the willingness of able people to lead state government. We need to keep good people in the legislature, on the bench, and in the executive branch. We lost prominent people in all three branches last year largely on the basis of money. And that's because we don't have any regular mechanism for making cost-of-living adjustments for the state's principal officers as we do for most public employees. There are years when the compensation of everyone in government stands still because there simply is no money, and other years like this one, when there's \$90 million in the budget to pay cost-of-living adjustments for everyone from troopers to caseworkers. It is clear to me that the only way to change that is a compensation commission of the sort that states like Missouri and Illinois and Georgia and others employ. I urge you to move us in that direction, towards a new system that assigns these decisions to a commission operating under strict statutory guidelines about when cost-of-living adjustments should be made.

Indiana needs a system that makes it easier for good people to stay. In short, one thing that Indiana needs for its future is a state government that is well led in all three branches.

Conclusion

The tragedy we all experienced at Frank O'Bannon's death was relieved in small part by the celebration of the meaning of a life well lived in the service of others. And the lesson for us is that we must live our own lives, to paraphrase a famous Hoosier, so that Indiana might have a new birth of freedom and that government of the people will carry on.

Eight More Counties to Participate in Family Courts Initiative

The Indiana Supreme Court has selected eight new counties to participate in the third phase of the Indiana family court initiative.

Beginning in January 2004, Tippecanoe, Lake, Henry, Vigo, Brown, Bartholomew, Jackson, and Lawrence counties received family court grant funding to implement model family court programs designed to coordinate the cases of families who have more than one case in the court system.

The eight new counties will receive a total of \$201,000 for their program initiatives in 2004 and \$197,000 in 2005. The bulk of funds for this program come from appropriations used for initiatives that specifically involve abused and neglected children. Following is a sketch of each new project:

Tippecanoe County: Tippecanoe Superior Court Judge Loretta H. Rush will develop a “family-focused” drug treatment court for juveniles and their families. Tippecanoe Circuit Court Judge Donald Daniel will work on case coordination, mediation, and service referral programming for low-income and high-risk families in divorce cases.

Lake County: Lake Superior Court Judge James Danikolas and Lake Circuit Court Judge Lorenzo Arredondo will develop separate but coordinated projects which will identify and share information on families who have cases in more than one courtroom and will develop mediation programming and service referral for low-income families.

Henry County: Henry Superior Court Judge Michael

Peyton and Henry Circuit Court Judge Mary Willis will develop affordable, nonadversarial dispute resolution for low-income families and a “one family-one judge” program to coordinate intense services to high-risk families.

Vigo County: Court officials will work with the local dispute resolution center to provide affordable mediation for low-income families without attorneys in contested custody and visitation matters.

Brown, Bartholomew, Jackson, and Lawrence counties: The judges of these southern Indiana counties have joined together to create a multi-county project aimed at providing affordable, non-adversarial dispute resolution and to identify and coordinate multiple-case families involved in this dispute resolution. Brown Circuit Court Judge Judith A. Stewart, Jackson Circuit Court Judge William Vance, Jackson County Referee Jeffrey Nierman, Lawrence Circuit Court Judge Pro Tempore Andrea McCord, Lawrence Superior Court Judge Michael Robbins, Bartholomew Circuit Court Judge Stephen Heimann, and Referee Heather Mollo will design this new regional approach to providing mediation services to low income and high-risk families.

The first two phases of the family courts project saw Boone, Johnson, LaPorte, Marion, Monroe, Montgomery, Porter, Putnam, and Owen counties develop and continue family pilot initiatives. These counties will now mentor the phase three projects by sharing their experiences and expertise.

New Members Named to JLAP

Six new members have been appointed to the Indiana Supreme Court’s Judges and Lawyers Assistance Program (JLAP), the Supreme Court entity which assists judges and lawyers recover from impairments related to mental health issues, substance abuse, physical ailments, or other factors.

The new appointees are Tonya J. Boller of Indianapolis, Hon. Michael A. Robbins, Lawrence Superior Court, Kimberly Jackson of Cory, Timothy O. Malloy of Highland, Stephanie J. Shappell of Crown Point, and John

Vissing of Jeffersonville.

Each will serve a three-year term ending December 31, 2006. They join nine current JLAP members.

The Judges and Lawyers Assistance Program was created by the Indiana Supreme Court through Rule 31 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys and is funded largely through annual registration fees paid by Indiana’s 14,000 or so attorneys.

Terry Crone Appointed to the Indiana Court of Appeals

On February 17, Governor Joe Kernan announced the appointment of St. Joseph Circuit Court Judge Terry A. Crone as judge of the Indiana Court of Appeals. He will succeed Chief Judge Sanford M. Brook, who served on the Court of Appeals since 1998.

Judge Crone has presided over the St. Joseph Circuit Court since 1989. He was master commissioner of the court before being appointed to the judgeship by Governor Evan Bayh. He was elected judge in 1990 and re-elected in 1996 and 2002. As judge, he has presided over hundreds of civil and criminal trials in all areas of law. Before his judicial service, Judge Crone was a lawyer in private practice and part-time city attorney for South Bend and county attorney.

"I am proud to appoint someone of Terry Crone's caliber to the Court of Appeals," Kernan said. "He is a

brilliant judge who understands the practical implications of his decisions. He will have great success on the Court of Appeals."

Judge Crone is a graduate of DePauw University and the University of Notre Dame Law School. As circuit court judge, Crone oversaw the Public Defender's Office, Adult Probation Department, and Domestic Relations Counseling Bureau.

He is a member of the Supreme Court Committee on Character and Fitness (which evaluates applicants for bar admission), the Alternative Dispute Resolution Committee of the Indiana Judicial Conference, and helped found a program in South Bend to expose minority high school students to the law and related fields. He is a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

Grau Group to Reassess Court Improvement Program

The Executive Committee of the Indiana Court Improvement Program, consisting of Chief Justice Randall Shepard, Justice Frank Sullivan, Jr., Judge Viola Taliaferro, Monroe Circuit Court, and Mary Harper, Porter Circuit Court, has selected The Grau Group to reassess the Supreme Court's Court Improvement Program, a federally-funded program designed to enhance disposition of child welfare cases.

The reassessment, mandated by federal grant guidelines, involves a quantitative analysis of the results of the Court's improvement program to date. The report generated by the reassessment will permit the Court and federal officials to gauge the success of Indiana's CIP program.

The Grau Group was one of four bidders for the contract. Specifically, federal grant conditions require that all states conduct a reassessment of their CIP programs to 1) update the state's earlier assessment finding in light of the Adoption and Safe Families Act (P.L. 35-1998); 2) evaluate the state's implementation of the Adoption and Safe Families Act; 3) determine the progress on court improvement reform efforts;

and 4) review the strengths and weaknesses related to court practices and procedures as defined by the federally required Child and Family Services Review and the IV-E Review.

The Grau Group will enlist the help of a "Stakeholder's Advisory Group" to assist in guiding the reassessment effort. That group will help determine methods of data collection, targets of data collection, quantitative analysis of data collected, and a review of the final report draft. The group will consist of juvenile court judges, child welfare workers, members of the bar, court-appointed special advocates and others.

Larry Grau, president of The Grau Group, conducted the original assessment of the Court Improvement Program in 1997. It is anticipated that a written reassessment will be available by June 2005.

The Supreme Court has received Court Improvement funding from the federal Department of Health and Human Services since 1995. Staff support for the CIP grant is provided by the Indiana Judicial Center and the Division of State Court Administration.

Seven Counties Receive State Drug Court Grants

Adult drug court programs in Allen, Dearborn, St. Joseph, Tippecanoe, and Vigo counties and juvenile drug court programs in Howard and Vanderburgh counties received \$50,000 in state drug court grants for FY 2003-2004.

"Drug courts" are programs calling for special methods used by trial courts to adjudicate and treat criminal justice defendants who need effective addiction treatment. These

programs call for treatment, intensive supervision and frequent drug testing to assure defendant accountability. Additionally, drug courts ensure that offenders have access to treatment through the judicious use of graduated sanctions and awards.

Funding for the grants was made available through an appropriation to the Indiana Supreme Court by the Indiana General Assembly.

Drug court programs in opera-

tion prior to July 1, 2003 were eligible for the grants. Awards were based on the court's ability to demonstrate financial need and the potential for diverting offenders from the Indiana Department of Correction. The Supreme Court will make an additional \$50,000 available for drug court grants in FY 2004-2005. Grant applications for FY 2004-2005 will be available in April 2004. Please contact the Indiana Judicial Center at 317-232-1313 for more information.

Court Interpreter Program Begins Certifications

Help is on the way for Spanish-speaking litigants in Indiana courts who are not conversant in English.

In response to a recommendation of its Commission on Race and Gender Fairness, the Indiana Supreme Court has instituted an Indiana court interpreter testing system for Spanish. The Court also approved in principle the concept for a code of ethics for interpreters and the concept for setting specific certification standards for interpreters. The Commission has convened an advisory board to assist the court in developing these components.

The first group of applicants began its certification process in October 2003 with a two-day orientation session. Instruction focused on judicial procedure, protocol and courtroom decorum, the role of the interpreter, ethical issues, terminology, and the skills and modes of interpreting. Applicants practiced their consecutive, simultaneous, and sight-interpreting skills and received feedback from the presenters. After the conclusion of the orientation, ap-

plicants took the court interpreting written exam (the second phase of the certification process) in November 2003. Only applicants who passed the written exam with a score of at least 70 percent were allowed to register for the third and fourth phases.

The third phase of the certification process is a two-day skills-building course geared to build vocabulary and improve existing skills. The oral Spanish language court interpreting proficiency examination, the fourth and final phase, will be administered in March 2004. The oral exam will be approximately one hour in length and will cover various interpreting scenarios. Participants who pass the oral exam with a score of at least 70 percent will be certified by the Indiana Supreme Court as qualified interpreters.

The second class is scheduled to begin its certification process with a two-day orientation in May 2004.

As part of the court interpreter program, the Legislature has appro-

priated \$100,000 both this fiscal year and next to help counties defray the costs of using qualified interpreters. The Court's goal is to increase the pool of available qualified interpreters, and to stabilize the rates some courts are paying for their services.

The Court anticipates a cadre of qualified Spanish interpreters in the beginning of 2004.

During 2003-2004, grant funds will be available to counties who use foreign language court interpreters, while the 2004-2005 funds will be available to counties that strive to use certified interpreters. The grant awards will depend on demonstrated financial need, the number of persons served by the grant, and the potential improvement in court interpreter services to litigants. Grant awards should be finalized by the end of March.

For more information, contact Anthony Zapata, staff attorney with the Division of State Court Administration, at (317) 232-2542.

Ask Jack -- Protecting Court Records

(Each issue, Jack Stark, Director of Trial Court Services, will answer reader questions concerning matters of court administration or general reader interest. Should no interesting questions be presented, Jack will make up a question and answer it! Anyone with a question is invited to send it to Jack Stark, Division of State Court Administration, 115 West Washington Street, Suite 1080, Indianapolis, Indiana 46204, or e-mail it to jstark@courts.state.in.us.)

Question: The chances of accidental destruction of trial court records seem about as remote as an asteroid striking the earth. Are there any special precautions we (as trial court clerks) should take to avoid physical destruction of records and what should I do to remedy the situation if the unthinkable occurs?

Answer: Despite your claim of improbability, the accidental physical destruction of court records does in fact occur, and will continue to happen from time to time as long as moisture, fire, and even termites and other vermin (to name three major culprits) are a fact of life.

Our records preservation and retention gurus here at the Division advise me of several basic strategies to avoid records degradation due to storage and environment. Courts and clerks should survey their office areas and records storage locations to identify potential hazards, such overhead water pipes, extension cords or overloaded power outlets, important records stored near windows, clogged drains, and poor ventilation. As a general precaution against fire and water hazards, portable, recently-inspected fire extinguishers and smoke detectors should be installed.

Clerks are encouraged to maintain a checklist of appliances to be turned off at night. Vital records can be placed in a closed and locked vault at night. Generally, records should be kept clean, closed, and covered.

In the case of electronically-stored records, clerks should have a procedure for regular electronic backup of all files. Storage of the backed-up data should be in a secure location.

Should you suffer destruction of court files, contact the Division for assistance. The Division has helpful yet arcane information relating to disaster recovery. For example, our records managers advises that, "books, sheets of paper, and other paper materials begin their physical breakdown within two to three hours of soaking in water. Action must occur within twelve to thirty-six hours in order to save the record." Who knew?

Incidentally, the chances of an asteroid striking the earth, while very remote at any given time, are in reality quite high over long periods of time. It has been estimated that the Earth has been struck by large asteroids capable of widespread physical destruction (i.e., those at least 50 meters wide) 350 times over the last 10,000 years.

MICROFILM ALERT

Your microfiche is not a salad dressing—it should not smell like vinegar.

In 1992, in an article appearing in the *Indiana Court Times*, the Division alerted trial court clerks and others microfilming trial court judicial records of a problem with certain types of microfilm deteriorating. A telltale sign of this problem is that this film gives off a vinegar smell. Thus, we dubbed it the "Vinegar Syndrome."

Until the mid to late 1980's, most microfilm was manufactured using an acetate base. This base can deteriorate, causing the film to curl and give off the vinegar smell. Such deterioration occurs more frequently in areas with high humidity or moisture, especially if the film is stored in cardboard boxes. It is important to note

that this process is not reversible and will contaminate other film stored near it.

If you have microfilm dating from prior to 1985, it is important for you to inspect it. Immediately upon opening a container housing the film, sniff the film to see if there is a vinegar smell. Does the film appear to be brittle or the edges curling on its center?

If you have these problems, or suspect that you do, please notify the Division of State Court Administration immediately. We, and the Indiana Commission on Public Records, can offer strategies to help save this and all your film. Contact John Newman or Tom Jones at 317-232-2542.

Rules Amendments...

Rules Committee Posts Proposed Amendments for Comment

The Indiana Supreme Court Committee on Rules of Practice and Procedure has posted for public comment a number of proposed rule amendments at www.in.gov/judiciary/orders/rule-amendments/proposed.html. Proposed rule amendments include:

Indiana Admission and Discipline Rule 22, Oath of Attorneys. This amendment adds language to the oath of attorneys acknowledging the profession's obligation to undertake *pro bono* service.

Indiana Trial Rule 4.6, Service upon organizations. This amendment clarifies that when a statute upon which an action is based provides an attorney for the governmental entity, the attorney for the governmental entity must be served.

Indiana Trial Rule 32, Use of depositions in court proceedings. This amendment clarifies that the Rules of Evidence, first adopted in 1994, apply to the admissibility of deposition evidence.

Indiana Trial Rule 81, Local court rules. This amendment provides an extensive overhaul of the current rule governing local rules. The proposed language is intended

to provide a consistent numbering system for local rules, procedures for adoption and review of rules, including public comment, and statewide accessibility to local rules.

Indiana Post-Conviction Rule 2, Belated appeals. This amendment clarifies the availability of Belated Post-Conviction Relief in specified circumstances to individuals who have pled guilty. The proposal also amends language consistent with the Rules of Appellate Procedure.

Indiana Rules of Evidence, Evidence Handling, Retention and Disposition. This proposal provides a framework for a discussion on the handling, retention and disposition of evidence presented in cases. This proposal provides a timetable and procedures for retaining and disposing of physical evidence.

The Committee invites public comment on the proposed rule amendments. Written comments must be received by **April 23, 2004**. Comments should be addressed to Lilia G. Judson, Executive Director, Indiana Supreme Court, Division of State Court Administration, 115 West Washington Street, Suite 1080, South Tower, Indianapolis, IN. 46204; or sent by email to stad@courts.state.in.us.

Court Seeks Comments on Proposed Amendments of Attorney Ethics Rules

Ethics 2000, a comprehensive review and update the *Rules of Professional Conduct* for Indiana attorneys moved closer to completion with the Indiana Supreme Court's posting of proposed revisions on the Internet for public comment.

Ethics 2000 was developed by the American Bar Association. The Indiana State Bar Association has led the effort in Indiana during the recent review of the model rules in light of the state's existing rules, customs and practices.

Several committees reviewed the model rules and presented proposals to the Indiana State Bar Association's House of Delegates late last year. The House of Delegates reviewed the proposal and sent its recommendation to the Supreme Court.

Indiana's *Rules of Professional Conduct* had not been comprehensively reviewed in over 10 years. Because 43 other states use some form of the ABA model rules, it was believed that maintaining conformity

with other states where possible should be considered.

The proposed rules include the requirement that attorneys obtain signed confirmation of waivers of conflicts of interest from clients and that they disclose material facts when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is otherwise prohibited. The proposed rules also create limited situations where attorneys who are not admitted in Indiana may practice in the state.

The revised *Rules of Professional Conduct* as approved by the House of Delegates can be found at www.in.gov/judiciary/orders/rule-amendments/proposed.html.

Written comments must be received by **April 23, 2004**. Comments may be addressed to Lilia G. Judson, Executive Director, Indiana Supreme Court, Division of State Court Administration, 115 West Washington Street, Suite 1080, South Tower, Indianapolis, IN. 46204; or sent by email to stad@courts.state.in.us.

More Rules Amendments....

Supreme Court Adopts Comprehensive Rule on Public Access to Court Records

The Indiana Supreme Court adopted revisions to Administrative Rule 9 on February 25, 2004, establishing a comprehensive public access policy for all court records in the state. The new rule is believed to be one of the first comprehensive public access policies adopted in the United States.

The new Administrative Rule 9 is the product of a task force appointed by the Court in January 2003 and chaired by Justice Brent Dickson. The task force, which met bi-weekly from January to September 2003, consisted of nearly thirty members including judges, clerks, private attorneys, victim's advocates, and media representatives. Representatives from the Indiana Civil Liberties Union and the Indiana Attorney General's Office also participated. The Division of State Court Administration provided staff and legal support for the task force.

Following the initial submission of the proposed rule to the Indiana Supreme Court, the Court accepted public comments for sixty days. In total, sixteen individuals and organizations offered comments to proposed rule.

Following the close of the public comment period in January, the Court made some revisions to the rule proposal and formally adopted the rule on February 25. The rule will take effect on January 1, 2005.

Administrative Rule 9 as amended contains twelve sections, and establishes as its main policy objective

that court records are open and publicly accessible. From that basic premise, the rule then lists particular information within court records or particular categories of court records that have some restrictions on their access by the public. For example, Social Security numbers and the addresses and telephone numbers of witness and victims are among information with restricted access.

The new rule also establishes a procedure for requesting that information not be made publicly accessible, as well as a procedure for requesting access to information that is not otherwise accessible.

The Division of State Court Administration is working on training and information materials that will help everyone better understand the new rule and how to handle requests for records.

For more information about the rule, or to see the actual copy of the rule, please visit the Court's website at <http://www.in.gov/judiciary> and look under the subsection entitled "Rule Amendments."

Austerman Named to Disciplinary Commission

Richmond-area business executive Fred Austerman has been named as the newest citizen member of the Indiana Supreme Court Disciplinary Commission. He began his term December 30, 2003, and will serve until June 30, 2008.

Austerman is the director of Sanyo Laser Products, Inc. of Richmond, Indiana, where he has worked since 1987 in human resources, finance, and purchasing.

The nine-member Disciplinary Commission is established by rule 23 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys to investigate complaints against attorneys and prosecute such matters when warranted. The Supreme Court renders the final decision in all attorney discipline matters. At least two of the nine members of the Commission must be non-lawyers. Members receive no salary for their service.

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Indiana Court Times

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Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisement, announcement, or particular issue you would like to see in our publication, please contact us.

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**This newsletter reports on
important administrative matters.
Please keep for future reference.**